

	National Oceanic and Atmospheric Administration	NOAA Administrative Order 205-3	
	NOAA ADMINISTRATIVE ORDER SERIES	DATE OF ISSUANCE 7/30/2016	EFFECTIVE DATE 7/30/2016
	SUBJECT Removal of Records and Other Documents		

SECTION 1. PURPOSE.

.01 This Order provides records disposition guidance to departing employee, contractors and senior officials related to the removal of documentary information from the National Oceanic and Atmospheric Administration (NOAA).

.02 This Order ensures that employees are aware that all "Federal Records" created, received, or maintained by them during their tenure must remain in the custody of the agency until disposed of or transferred to the National Archives and Records Administration (NARA) in accordance with their records retention policies, regulations, and schedules.

SECTION 2. SCOPE.

This order applies to all NOAA employees, including political appointees, consultants, interns, contractor personnel, and other non-NOAA employees conducting business on behalf of the agency. This Order appends Department Administrative Order (DAO) 205-3, Removal of Records and Other Documents and Document Preservation for Departing Employees guidance issued by the Department of Commerce, General Law Division.

SECTION 3. DEFINITIONS.

.01 **Documentary Materials** - Is a collective term for records, nonrecord materials, and personal papers that refers to all media containing recorded information, regardless of the nature of the media or the method(s) or circumstance(s) of recording. The three types of documentary material are defined in items 3.02 through 3.04 of this section.

.02 **Federal Records** - Include all recorded information, regardless of form or characteristics, made or received by a Federal agency under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the United States Government or because of the information value of data in them. Federal records do not include (i) library and museum material made or acquired and preserved solely for reference or exhibition purposes; or (ii) duplicate copies of records preserved only for convenience.

.03 Nonrecords - Are Government-owned documentary materials that have no administrative, fiscal, legal, or historical value. They are kept only for reference purposes. Examples include but are not limited to:

- a. Stocks of publications and forms;
- b. Library or museum material;
- c. Information copies of correspondence, forms, and other documents for which no administrative action is recorded or taken;
- d. Directives and circulars issued by other offices;
- e. Duplicate copies of documents maintained in the same file; extra copies of printed or processed materials for which complete record sets exist, such as current and superseded manuals maintained outside the office responsible for maintaining the record set;
- f. Catalogs, trade journals, and other publications that are received from other Government agencies, commercial firms, or private institutions that require no action and are not part of a case on which action is taken; and
- g. Physical exhibits, artifacts, and other material objects lacking evidential value. These work-related materials, though excluded from the definition of "record," nevertheless belong to and are controlled by the Government (36 CFR 1222.34(f)).

.04 Personal Papers - Are defined in Federal regulations as "documentary materials, or any reasonably segregable portion thereof, of a private or nonpublic character that do not relate to or have any effect upon the conduct of agency business" (36 CFR 1222.36(a)). Personal papers are excluded from the definition of Federal records and are not owned by the Government. Such papers, whether kept electronically and/or in hardcopy, should be labeled "personal" and kept separately from official records. Personal papers are not subject to the disposal requirements of this policy. There are three generally accepted classes of personal papers:

- a. Materials accumulated by an individual before joining Government service that are not later used to conduct Government business. Examples include previous work files, political materials, and reference files;
- b. Materials relating solely to an individual's private affairs, such as outside business pursuits, professional affiliations, or private political associations that do not relate to agency business; and
- c. Work-related materials, such as diaries, journals, notes, and logs that are not prepared, received, or used in the process of transacting agency business. Although these materials contain work-related information, they are personal papers if they are claimed as such and serve only the individual's own purpose.

.05 **Temporary Records** - Are those records that the National Archives and Records Administration (NARA) approve for either immediate disposal or for disposal after a specified time or event.

.06 **Permanent Records** - Are those records that NARA appraises as having sufficient value to warrant continued preservation by the Federal Government as part of the National Archives of the United States.

.07 **Working files and similar materials, including preliminary drafts, rough notes, worksheets, correspondence and memos, reports, and other similar materials** are records that must be maintained to ensure adequate and proper documentation if:

- a. They were circulated or made available to employees, other than the creator, for official purposes such as approval, comment, action, recommendation, follow-up, or to communicate with agency staff about agency business; and
- b. They contain unique information, such as substantive annotations or comments that adds to a proper understanding of the agency's formulation and execution of basic policies, decisions, actions, or responsibilities.

.08 **Record Schedules** - Provide mandatory instructions for the disposition of the records (including the transfer of permanent records and disposal of temporary records) when they are no longer needed by the agency. Timely record disposition should be incorporated into the normal course of agency business in order to remain in compliance with the Federal Records Act. All Federal records must be scheduled (44 U.S.C. 3303) either by an agency schedule or a General Records Schedule (GRS). Agencies are required by law to develop records schedules for all of their records not covered by the GRS (44 U.S.C. 3303).

.09 **Inactive Records** - Are records that are no longer needed to conduct Agency business. Events in this phase of the lifecycle include closing records, optionally retiring them to off-site storage, and destroying or transferring them to the National Archives. NOAA records schedules provide instructions for each of these events.

.10 **Unscheduled Records** - Are Federal records whose final disposition has not been approved by NARA. Such records must be treated as permanent until a final disposition is approved.

.11 **Other Documents** - To distinguish "other documents" from Federal records as defined in Section 3.02, for the purpose of this Order, the term "other documents" refer to both nonrecord materials and personal papers, as defined in Section 3.03 and 3.04 above.

SECTION 4. POLICY.

This policy has been established to ensure proper record management deposition activities are followed or adhered to by departing employees to ensure all Federal records under their custody are safeguarded and handled properly during transitional periods such as permanent reassignment or departure from the agency.

.01 General

Federal records, as defined in Section 3.02 above, must remain with the agency during an employee's tenure, when the employee moves to another organization within NOAA, and after departure of the employee from the agency. In addition, the departing employee must follow the guidance below:

- a. Federal records cannot be destroyed unless such destruction is in compliance with an approved records retention schedule issued by NARA, and the retention requirements for the records targeted for disposal have been satisfied.
- b. All temporary records eligible for disposal must be documented on the NOAA Records Destruction Form and certified by the Records Liaison Officer (RLO) and Authorizing Program Official for the office before they can be destroyed.
- c. Record that are placed under a litigation hold or any other moratorium on record destruction cannot be destroyed, even if the retention requirements for the records have otherwise been satisfied. Contact and follow the guidance of NOAA General Counsel for records under a litigation hold.
- d. All permanent records in the employee's custody which are eligible for transfer to NARA must be turned over to their RLO assigned to the office for review and accessioning to NARA.
- e. Records under the custody of the employee that reside in a word processing system, e-mail system, or on other electronic media must be filed in an official filing system or turned over to their supervisor. In the case of government phones or tablets, the employee must turn the devices in with the corresponding passwords to their supervisor prior to their departure, and must not initiate a factory reset until all record material needed to conduct agency business has been transferred or stored to an appropriate location where the information can be accessed. In the absence of the employee's supervisor, the records may be turned over to the office program official or the assigned RLO for the office and the device may be turned over to the property custodian.
- f. Records under the ownership of departing employee that are stored on a cloud site must be reassigned to a new account holder and filed in an official filing system for continued preservation 30 days prior to the employee's departure.
- g. Records sent or received in a personal email account of the employee must be captured and maintained in the agency official recordkeeping system. The Federal Records Act (44 U.S.C. 2911) provides that an officer or employee of an executive agency may not create or send a record using a non-official electronic messaging account unless such officer:
 1. Copies an official electronic messaging account of the officer or employee in the original creation or transmission of the record; or
 2. forwards a complete copy of the record to an official electronic messaging account of the officer or employee not later than 20 days after the original creation or transmission of the record.

The intentional violation of Section 4.01(f) above, (including any rules, regulations, or other implementing guidelines), as determined by the appropriate supervisor, shall be a basis for

disciplinary action in accordance with subchapter I, II, or V of chapter 75 of title 5, as the case may be.

.02 Documentary Material that cannot be removed from the Agency

- a. Federal records or nonrecord documents that contain national security information or information of a confidential nature must not be removed from the agency.
- b. Documents exempt from public disclosure under the Freedom of Information Act (FOIA) or the Privacy Act, as well as other classified documents, must not be removed by the departing official or employee. However, an employee may keep copies of any Privacy Act records that pertain solely to the employee and are in the employee's possession at time of departure.
- c. Documents which are currently the subject of litigation hold, FOIA request or other inquiry.
- d. Drafts, working files, and background materials relating to the formulation and execution of high-level policies, decisions, actions, or responsibilities that may be needed to adequately document activities of the agency. If they are needed to adequately document the agency's activities, these documents are Federal records that must be maintained by the agency in accordance with the agency's retention schedules. These documents are not personal papers.

.03 Documentary Materials that can be removed from the Agency

- a. Nonrecord materials, including extra copies of unclassified or formally declassified agency records kept only for convenience of reference, may be removed by departing employees with the approval of the supervisor, program official, or individual(s) authorized to act for the agency on records issues, such as the RLO or records custodian if the removal the nonrecord documents will not:
 - 1. impose substantial handicaps on the efficient, continued functioning of an office or of the successors of an officer or employee,
 - 2. diminish the records or other documentary information needed for the official business of the Department
 - 3. violate the confidentiality required by national security, privacy, or other interests protected by law, or
 - 4. exceed normal administrative economies.
- b. Personal papers are not Federal records and may be removed from the agency or disposed of by the departing employee.
- c. Temporary records that are eligible for disposal may be donated to individuals or organizations. Contact your RLO or NOAA Records Officer for guidance and procedures.

.04 Departing Employee Records Management Procedures

- a. The Departing Employee must complete the Records Management Clearance Checklist for Departing Employees, Senior Officials, and Contracting Employees (Attachment 1) prior to separation and submit to their supervisor.

b. The departing employee must sign the Records Removal Certification Form (Attachment 2A) and the Departing Employee List of Nonrecord Material Form (Attachment 2B) and forward to their supervisor for review before departing the agency. In the absence of the employee's supervisor, the office program official or the assigned RLO for the office may sign both forms.

.05 Departing Employee's Supervisor Records Management Procedures

a. The supervisor of the departing employee must review the request for the removal of non-record material.

b. All approved requests must be documented on Attachment 2A and 2B of this NAO.

c. The supervisor of the departing employee must sign and maintain a copy of the signed records Removal Certification Form (Attachment 2A), a copy of the signed Departing Employee List of Nonrecord Material Form (Attachment 2B) along with the Records Management Clearance Checklist for Departing Employees, Senior Officials, and Contracting Employees (Attachment 1) in the employee's separation folder,

d. The departing employee's supervisor, in conjunction with the records liaison officer, will provide guidance on the removal or disposal of excess nonrecord materials that are no longer needed in the office.

.06 Penalties for Non-Compliance

An employee who observes an occurrence of unauthorized removal, defacing, alteration, loss or destruction of records from the agency custody must report the occurrence as soon as possible to the supervisor of the employee taking the unauthorized action, as well as to the records custodian, Records Program Manager, and RLO. The RLO shall report the occurrence to the NOAA Records Officer. The NOAA Records Officer shall report the occurrence to NARA and establish the safeguards to prevent further loss of documentation.

Additional statutes cover the responsibilities of Federal officers and employees regarding unlawful removal of records and the criminal penalties therefor as follows:

1. 44 U.S. Code 3106 states:

"Unlawful removal, destruction of records

The head of each Federal agency shall notify the Archivist of any actual, impending, or threatened unlawful removal, defacing, alteration, or destruction of records in the custody of the agency of which he is the head that shall come to his attention, and with the assistance of the Archivist shall initiate action through the Attorney General for the recovery of records he knows or has reason to believe have been unlawfully removed from his agency or from another Federal agency whose records have been transferred to his legal custody."

2. 18 U.S. Code 2071 states:

"Concealment, removal, or mutilation generally:

(a) Whoever willfully and unlawfully conceals, removes, mutilates, obliterates, or destroys, or attempts to do so, or, with intent to do so takes and carries away any record, proceeding, map, book, paper, document, or other thing, filed or deposited with any clerk or officer of any court of the United States, or in any public office, or with any judicial or public officer of the United States, shall be fined not more than \$2,000 or imprisoned not more than three years, or both.

(b) Whoever, having the custody of any such record, proceeding, map, book, document, paper, or other thing, willfully, and unlawfully conceals, removes, mutilates, obliterates, falsifies, or destroys the same, shall be fined not more than \$2,000 or imprisoned not more than three years, or both; and shall forfeit his office and be disqualified from holding any office under the United States."

(c) Under 44. U.S. Code 2905, the Archivist shall notify the head of a Federal agency of any actual, impending, or threatened unlawful removal, defacing, alteration, or destruction of records in the custody of the agency that shall come to the Archivist's attention, and assist the head of the agency in initiating action through the Attorney General for the recovery of records unlawfully removed and for other redress provided by law.

SECTION 5. REFERENCES.

There are many regulatory authorities at the United States Codes (U.S.C.) and Code of Federal Regulations (CFR) level and references at the DOC and NOAA level that disseminate information on the disposition of records. The following directives focus primarily on the removal of records during an employee's tenure and when the employee is departing the agency and should be consulted as practical:

.01 Concealment, Removal, or Mutilation of Records, 18 U.S.C. § 2071.

.02 Disposal of Records, 44 U.S.C. Chapter 33.

.03 Unlawful Removal, Destruction of Records, 44 U.S.C. § 3106.

.04 Removal of Records, 36 CFR Chapter 12, § 1222.24.

.05 Removal of Nonrecord Materials, 36 CFR Chapter 12, § 1222.18.

SECTION 6. EFFECT ON OTHER ISSUANCES.

.01 The Under Secretary of Commerce for Oceans and Atmosphere signs because the Chief Administrative Officer (CAO) does not have a delegation of authority for the NAO. An electronic copy of this Order will be posted on the NOAA Office of the Chief Administrative Officer website under the NOAA Administrative Issuances Section.

<http://www.corporateservices.noaa.gov/~ocao/index.html>


Under Secretary of Commerce for
Oceans and Atmosphere

Offices of Primary Interest:
Office of Audits and Information Management

Attachments:

- Attachment 1 - Records Management Clearance Checklist for Departing Employees, Senior Officials, and Contractors.
- Attachment 2A - Records Removal Certification Form.
- Attachment 2B - Departing Employee Senior Official and Contractor List of Nonrecord Material Form.
- Attachment 3 - Department Administrative Order (DAO) 205-3 Removal of Records and Other Documents.